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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/026,224	12/19/2001	Mogens Bugge	P/1094-129	4362

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OSTROLENK FABER GERB & SOFFEN  
1180 AVENUE OF THE AMERICAS  
NEW YORK, NY 100368403

EXAMINER

OROPEZA, FRANCES P

ART UNIT PAPER NUMBER

3762

DATE MAILED: 08/12/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/026,224

Applicant(s)

BUGGE ET AL.

Examiner

Frances P. Oropeza

Art Unit

3762

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --****Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 6/24/03 (Election).
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-23 is/are pending in the application.
- 4a) Of the above claim(s) 5,7-9 and 11-23 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-4, 6 and 10 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 19 December 2001 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☒ None of:  
1. ☒ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)                      4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)                      5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 5.                      6) ☐ Other: \_\_\_\_\_

**DETAILED ACTION**

***Election/Restrictions***

1. Claims 5, 7-9 and 11-23 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to nonelected species, there being no allowable generic or linking claim. The Applicant timely traversed the restriction (election) requirement in Paper No. 7.

***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-4, 6 and 10 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 1, line 2, "the heart" lacks antecedent basis.

In claim 1, line 3, "the organism" lacks antecedent basis.

Claim 1 is unclear because in line 7 it appears "consists" should be --consisting--.

In claim 2, "the running parameters" lacks antecedent basis.

In claim 4, the phrase "or a similar device" used in association with two different limitations and "or a similar device" used in association with one limitation makes these three different limitations indefinite.

In claim 4, "the piston" and "the membrane" lack antecedent basis.

In claim 10, "the piston rods" and "the piston pump" lack antecedent basis.

Appropriate correction is required.

***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1-4, 6 and 10 are rejected under 35 U.S.C. 102(b) as being anticipated by Hayes (US 5269811). Hayes et al. discloses a cardiac fluid actuated, fluid propelled system for the heart (abstract; figures 13, 22, 23; col. 16 @ 13-17; col. 20 @ 9-33).

5. Claims 1, 2, 4, 6 and 10 are rejected under 35 U.S.C. 102(b) as being anticipated by Jarvik (US 4173796). Jarvik discloses a cardiac assist device using hydraulic energy (figure 10; col. 8 @ 17-21; col. 9 @ 33 – col. 10 @ 25).

***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint Inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the Examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. The Applicant is advised of the obligation under 37 CFR 1.56 to point out the Inventor and invention dates of each claim that was not commonly owned at the time a

later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

7. Claims 1-4, 6 and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Davidson (US 5782910) in view of McLean (US 3563245). Davidson teaches a cardiac assist device (figure 5; col. 8 @ 42-65) and discloses the claimed invention except for the pump being at least partially hydraulically powered.

McLean et al. teaches powering implanted device using hydraulic power for the purpose of tapping energy derived from muscular contraction of the heart to minimize the use of battery energy. It would have been obvious to one having ordinary skill in the art at the time of the invention to have used hydraulic energy derived from muscular contraction of the heart in the Davidson system in order maximize the battery life, avoiding a potentially dangerous surgical procedure to replace the battery (abstract; col. 1 @ 43-49 and 59-69).

8. Claims 1-4, 6 and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gao (US 5314469) in view of McLean (US 3563245). Gao teaches a cardiac assist device (figures 1-4; col. 2 @ 10-56; col. 3 @ 37-50; col. 5 @ 42-55) and discloses the claimed invention except for the pump being at least partially hydraulically powered.

McLean et al. teaches powering implanted device using hydraulic power for the purpose of tapping energy derived from muscular contraction of the heart to minimize the use of battery energy. It would have been obvious to one having ordinary skill in the art at the time of the invention to have used hydraulic energy derived from muscular contraction of the heart in the Gao system in order maximize the battery life, avoiding a potentially dangerous surgical procedure to replace the battery (abstract; col. 1 @ 43-49 and 59-69).

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*Specification*

9. The disclosure is objected to because a regulator (43) is disclosed in the specification (page 13, line 12) but is not included in figure 8. Appropriate correction is required.

*Claim Objections*

10. The reference numerals in the claims are superfluous and should be deleted. Appropriate correction is required.

11. Claim 3 is objected to because there is no period at the end of the sentence. Appropriate correction is required.

*Conclusion*

Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Fran Oropeza, telephone number is (703) 605-4355. The Examiner can normally be reached on Monday – Thursday from 6 a.m. to 4:30 p.m.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's Supervisor, Angela D. Sykes can be reached on (703) 308-5181. The fax phone number for the organization where this application or proceeding is assigned is (703) 306-4520 for regular communication and for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Receptionist, telephone number is (703) 308-0858.

Frances P. Oropeza  
Patent Examiner  
Art Unit 3762

8-6-03

*Angela D. Sykes*  
ANGELA D. SYKES  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 3700